

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DAVID M. GAILBREATH,)
)
Plaintiff,) Civil Action No. 17-542
)
v.) Judge Cathy Bissoon
)
BOROUGH OF SALTSBURG,)
)
Defendant.)

ORDER DISMISSING CASE

On April 26, 2017, Defendant Borough of Saltsburg removed this matter to this Court from the Indiana County Court of Common Pleas (Doc. 1). On June 16, 2017, Defendant filed a Motion to Dismiss for Failure to State a Claim, or, in the alternative, a Motion for a More Definite Statement, pursuant to Federal Rule of Civil Procedure 12(b). (Doc. 8). Plaintiff was ordered to file a response to Defendant's Motion on or before July 6, 2017 but failed to do so. See Text Order of June 16, 2017 (Doc. 10).¹ On July 11, 2017, Plaintiff was ordered to show cause as to why this case should not be dismissed for his failure to prosecute. (Doc. 14). Plaintiff's written response to the Court's Show Cause Order was due by July 25, 2017. Once again, Plaintiff failed to comply with the Court's Show Cause Order.

¹ Notably, the Court sent the June 16, 2017 Response Order to Plaintiff at both his address of record (David M. Gailbreath, 665 Hood School Road, Indiana, PA 15701) as well as the address identified in Defendant's Motion (David M. Gailbreath, 202 Market Street, Saltsburg, PA 15681). The copy of the Court's June 16, 2017 Text Order sent to Plaintiff's address of record was returned to the Court marked "Return to Sender" and "Not Here." However, the copy of the June 16, 2017 Text Order sent to Plaintiff's address in Saltsburg, PA was not returned to the Court, and thus the Court presumes that Plaintiff received that Order.

In light of the foregoing, dismissal is warranted under Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863 (3d Cir. 1984). Specifically, the Court relies on the Poulis factors regarding Plaintiff's personal responsibility; history of dilatoriness/unresponsiveness; failure to demonstrate excusable neglect; and the lack of effective, alternative sanctions. Id. at 868. Simply put, Plaintiff's repeated failure to respond to Court Orders, and seeming disinterest in prosecuting this case, leave no meaningful alternative to a dismissal.

For all of these reasons, this case is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

July 28, 2017

s/Cathy Bissoon

Cathy Bissoon
United States District Judge

cc (via First-Class U.S. mail):

David M. Gailbreath
665 Hood School Road
Indiana, PA 15701

David M. Gailbreath
202 Market Street
Saltsburg, PA 15681